



**In the Matter of:**

**CEDRIC WINTERS,**

**ARB CASE NO. 12-080**

**COMPLAINANT,**

**ALJ CASE NO. 2010-NTS-001**

**v.**

**DATE: July 31, 2012**

**SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

***Cedric Winters, pro se, San Leandro, California***

***For the Respondent:***

***Thomas C. Lee, Esq., and Victoria R. Nuetzel, Esq.; Office of the General Counsel, San Francisco Bay Area Rapid Transit District, Oakland, California***

***Before: Paul M. Igasaki, Chief Administrative Appeals Judge and Luis A. Corchado, Administrative Appeals Judge***

**FINAL DECISION AND ORDER DISMISSING INTERLOCUTORY APPEAL**

The Respondent, San Francisco Bay Area Rapid Transit District (BART), has filed an interlocutory appeal of the ruling of a Department of Labor Administrative Law Judge's Interim Decision (I.D.) finding that BART violated its statutory obligations under the National Transit Systems Security Act,<sup>1</sup> when it terminated Complainant Cedric

---

<sup>1</sup> 6 U.S.C.A. § 1142 (Thomson/West Supp. 2011).

Winters's employment on September 22, 2008. The Administrative Law Judge (ALJ) stated in his order, "Once the additional evidence on remedies is filed, I will close the record, take the matter under submission, and issue a Decision and Order."<sup>2</sup> The ALJ's I.D. did not include a Notice of Appeal Rights.

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the NTS to the Administrative Review Board.<sup>3</sup> The Secretary's delegated authority to the Board includes, "discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute."<sup>4</sup> Because the ALJ has not issued his final Decision and Order in this matter, BART's request that the Board review the ALJ's I.D. is an interlocutory appeal.

Where an ALJ has issued an order of which the party seeks interlocutory review, the ARB has elected to look to the procedures set forth in 28 U.S.C.A. § 1292(b)<sup>5</sup> to determine whether to accept an interlocutory appeal for review.<sup>6</sup> In *Plumley v. Federal Bureau of Prisons*,<sup>7</sup> the Secretary ultimately concluded that because no ALJ had certified the questions of law raised by the respondent in his interlocutory appeal as provided in 28

---

<sup>2</sup> I.D. at 26.

<sup>3</sup> Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

<sup>4</sup> *Id.* at § 5(c)(48).

<sup>5</sup> This provision states in pertinent part:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order.

28 U.S.C.A. § 1292(b) (Thomson/West 2006).

<sup>6</sup> *Powers v. Pinnacle Airlines, Inc.*, ARB No. 05-138, ALJ No. 2005-SOX-065, slip op. at 5 (ARB Oct. 31, 2005); *Plumley v. Federal Bureau of Prisons*, 1986-CAA-006 (Sec'y Apr. 29, 1987).

<sup>7</sup> 1986-CAA-006 (Sec'y Apr. 29, 1987).

U.S.C.A. § 1292(b), “an appeal from an interlocutory order such as this may not be taken.”<sup>8</sup> In this case, it did not appear that BART had requested the ALJ to certify the case for interlocutory review. Furthermore, the Secretary of Labor and the Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals.<sup>9</sup>

BART, in its interlocutory appeal failed to address, much less establish, any grounds upon which the Board should grant interlocutory review in this case. Accordingly, the Board ordered BART to show cause no later than July 27, 2012, why the Board should not dismiss its interlocutory appeal for failure to establish grounds for such appeal. The Board cautioned BART that failure to timely respond to the show cause order could result in dismissal of the appeal without further order.<sup>10</sup>

BART has failed to respond to the Board’s show cause order. Accordingly, finding no basis on which to accept BART’s interlocutory appeal, we **DISMISS** it.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

---

<sup>8</sup> *Id.*, slip op. at 3 (citation omitted).

<sup>9</sup> *See, e.g., Welch v. Cardinal Bankshares Corp.*, ARB No. 04-054, ALJ No. 2003-SOX-015 (ARB May 13, 2004); *Hibler v. Exelon Generation Co., LLC*, ARB No. 03-106, ALJ No. 2003-ERA-009 (ARB Feb. 26, 2004); *Amato v. Assured Transp. & Delivery, Inc.*, ARB No. 98-167, ALJ No. 1998-TSC-006 (ARB Jan. 31, 2000); *Hasan v. Commonwealth Edison Co.*, ARB No. 99-097; ALJ No. 1999-ERA-017 (ARB Sept. 16, 1999); *Carter v. B & W Nuclear Techs., Inc.*, ALJ No. 1994-ERA-013 (Sec’y Sept. 28, 1994).

<sup>10</sup> *Accord Edmonds v. TVA*, ARB No. 05-02, ALJ No. 2004-CAA-015, slip op. at 3 (ARB July 22, 2005).